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09/292,056	04/14/1999	JOEL S. GREENBERGER	PITT-1DIV	3040

EXAMINER	
BEISNER, WILLIAM H	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed: 12-5-07

In re application of

JOEL S. GREENBERGER ET AL.

Serial No. 09/292,056

Filed: April 14, 1999

For: METHOD AND APPARATUS FOR HOLDING CELLS

caf

DECISION ON
PETITION

This is a decision on the PETITION UNDER RULE 1.181 to rescind the restriction requirement issued by the Examiner in the office action dated April 3, 2007 and placed in the final status by the Examiner in the action dated September 20, 2007.

On January 18, 2007 a second request for continued examination (RCE) was filed by applicant. On April 3, 2007, an office action was mailed containing a restriction requirement. On July 5, 2007 an election and traversal to the restriction requirement were filed. On September 20, 2007 a non-final office action was mailed. In this office action, the restriction requirement was made final.

On October 15, 2007 the instant petition under 37 CFR 1.181 was timely filed to formally request that the restriction requirement be rescinded.

DECISION

MPEP Chapter 800 states:

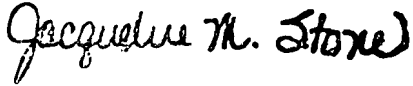
811 Time for Making Requirement

37 CFR 1.142(a), second sentence, indicates that a restriction requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops.

Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.

In the present application, four office actions were mailed before the restriction requirement of April 3, 2007 was mailed. In each of these four office actions, the claims were treated on the merits. Thus, even if the restriction requirement is proper, it is clear that the restriction requirement was not made as soon as the need for a proper restriction developed as required by MPEP 811.

Accordingly, the restriction requirement as set forth in the office action of April 3, 2007 is untimely and should be withdrawn. The instant petition is **GRANTED**. The examiner is directed to withdraw the requirement and prepare a new office action.



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